



KINGDOM OF CAMBODIA
NATION RELIGION KING

ក្រុមប្រឹក្សាសវនកម្មជាតិ
THE ARBITRATION COUNCIL

Case number and name: 22/08 - Hytex

Date of Award: 5 March 2008

ARBITRAL AWARD

(Issued under Article 313 of the Labour Law)

ARBITRATION PANEL

Arbitrator chosen by the employer party: **KAO THACH**

Arbitrator chosen by the worker party: **TUON SIPHANN**

Chair Arbitrator (chosen by the two Arbitrators): **PEN BUNCHHEA**

DISPUTING PARTIES

Employer party:

Name: **Hytex Garment (Cambodia) Ltd.**

Address: National Road 2, Sangkat Chak Angre Leu, Khann Mean Chey, Phnom Penh

Telephone: 023 425 078 Fax: 023 425 098

Representative:

1. Ms. Nhoung Sokunthea Staff of Administration
2. Ms. Ching Sokunthea Staff of Administration

Worker party:

Name: **Coalition of Cambodian Apparel Workers Democratic Union (C.CAWDU)**

Local Union of Hytex Company

Address: National Road 2, Sangkat Chak Angre Leu, Khann Mean Chey, Phnom Penh

Telephone: 012 988 623 Fax: N/A

Representative:

1. Mr. Oum Visal Deputy Secretary of C.CAWDU
2. Ms. Om Savin President of local union of Hytex Company
3. Ms. Soy Danet Vice-president of local union of Hytex Company
4. Ms. Sok Nouv Secretary of local union of Hytex Company

5. Mr. Yim Borin	Worker at cutting section
6. Ms. Souk So Khan	Worker at cutting section
7. Ms. Kout Chr ny	Worker at printing section
8. Ms. Bo Veasna	Director of printing section
9. Ms. Seam Thyda	Worker delegate
10. Ms. Ros Sopheal	Worker delegate
11. Ms. Yig Sarean	Worker delegate

ISSUES IN DISPUTE

(In the Non-Conciliation Report)

1. The workers ask that the company maintain cutting section and printing section because there are works for these sections to do but the company transports the garment for outsiders to do; the workers in these section demand that the company terminate the existing contract first by calculating severance payment according to Labour Law, if the company requires workers to work at another branch. The company does not agree with the demand and it requires workers in these sections to work in another branch, it will retain the same seniority and other benefits as at the old location and the Company will pay for transportation.

JURISDICTION OF THE ARBITRATION COUNCIL

The Arbitration Council derives its power to make this Award from Chapter XII, Section 2B of the Labor Law (1997); the Prakas on the Arbitration Council No. 099 dated 21 April 2004; the Arbitration Council Procedural Rules which form an Annex to the same Prakas; and the Prakas on the Appointment of Arbitrators No. 076 dated 10 May 2007 (Fifth Term).

An attempt was made to conciliate the collective dispute that is the subject of this Award, as required by Chapter XII, Section 2A of the Labour Law. The conciliation hearing which took place on February 11, 2008 was unsuccessful, and the non-conciliation report No. 199 K.B/AK/VK was submitted to the Secretariat of the Arbitration Council on February 12, 2008.

HEARING AND SUMMARY OF PROCEDURE

Place of hearing: The Arbitration Council, Phnom Penh Center, Building A, Sothearos Blvd., Sangkat Tonle Basak, Khann Chamkarmorn, Phnom Penh.

Date of hearing: February 15, 2008 (Time 3:00pm to 5:30pm)

Procedural issues:

On 31 January 2008, the Department of Labour Disputes received a complaint from workers at Hytex Company regarding the company's request for workers in the cutting section and the printing section to work at a new location. Then, the Department assigned an officer to conciliate the dispute and the last conciliation was held on 04 February 2008, but issue was not conciliated. The one non-conciliated issue was referred to the Secretariat of the Arbitration Council on 12 February 2008 through the collective dispute report No 199 K.B/AK/VK Date 11 February 2008.

After receiving the case, the Secretariat of the Arbitration Council invited the employer party and the worker party to the hearing and conciliation on the one non-conciliated issue on 15 February 2008 at 3:00 p.m.

Both parties were present as invited by the Arbitration Council. The Arbitration Council asked for more information related to the issue and also tried to conciliate the non-conciliated point but did not receive any conciliation result. Therefore, the Arbitration Council will consider the non-conciliation point base on the evidence and the clarification by the parties in the hearing as follows:

EVIDENCE

Witnesses and experts: N/A

Documents, Exhibits and other evidence considered by the Arbitration Council

Provided by the employer party:

1. Notification HYC: 1408 regarding the responsibilities of the Company when moving to the new location, dated 6 August 2007.
2. Power of attorney to Ms. Nhoung Sokunthea, Ms. Ching Sokunthea to appear and resolve the labor dispute on 15 February 2008.
3. Agreement between employer party and workers union on the conflict resolution of the labor dispute of Hytex Garment (Cambodia) Company, dated 25 January 2008.
4. Certificate of commercial registration of Hytex Garment (Cambodia) Company, No 1361 PN.PKB.KN, dated on 06 June 1996.
5. Memorandum and statute of Hytex Garment (Cambodia) Company, dated 08 January 2002.
6. Internal Work Rules of Hytex Garment Company, No 036 SKBY.AK, dated 05 April 2001.

Provided by the worker party:

1. Agreement between employer party and workers union on the conflict resolution of the labour dispute of Hytex Garment (Cambodia), dated 25 January 2008.
2. Notification HYC: 1408 regarding the responsibilities of the Company when moving to the new location, dated 6 August 2007.
3. Name list of the workers in the cutting section and printing section, dated 14 February 2008.
4. Letter from Coalition of Cambodia Apparel Workers Democratic Union No. 02/08 to the Arbitration Council about the summary statement on the collective labour dispute No. 22/08 at the Hytex Company, dated 16 February 2008.
5. Minutes of election to establish the local union of C.CAWDU at Hytex Factory, dated 23 September 2007.

Provided by the Ministry of Labour and Vocational Training [MoLVT]:

1. Report of the collective labour dispute resolution at Hytex Company, No. 199 K.B/A.K/V.K dated 11 February 2008 from Department of Labour dispute.
2. Minutes of collective labour dispute conciliation at the company, dated 04 February 2008.

Provided by the Secretariat of the Arbitration Council:

1. Invitation letter No. 110 KB/AK/VK/LKA, dated 13 February 2008 to invite the Company party to attend the hearing.
2. Invitation letter No. 111 KB/AK/VK/LKA, dated 13 February 2008 to invite the worker party to attend the hearing.

The Arbitration Council finds that:

- Hytex Garment Company employs 718 workers and among those workers, 41 workers are in the cutting section and 24 are in the printing section, for a total of 65 such workers.
- Among 65 workers in the cutting and printing sections only three employees have a fixed duration contract: workers with ID 1910, 1912 and 1975.
- The company required those 65 workers to work at the company's new branch.
- The workers party demanded the company not to move these two sections' workers to work at the company's new branch, but if the company required these two sections' workers to work at the company's new branch then the company should terminate their old contracts and pay them according to the Labour Law.

- On 6 August 2007, company's party, union federation workers, and union workers' representative issued a joint announcement of notification No. HYC: 1408, dated 6 August 2007 saying that "until now the company has not yet moved locations, but if the company moves locations, the company will be responsible for all the workers according to their promise as follows:
 1. If there is any worker who can not move, the company will pay for termination of the contract in accordance with the law.
 2. The company will provide written notice and settle with the workers one month before they move.
 3. If they move, the company will apply voluntary principles.
- The company's party clarified that, the company asked the workers in the cutting and printing sections to work at the new branch because at the old location is narrow and needed to be repaired and other equipment required installation according to the standard that the buyer wanted, but the company did not state when the repairs and installation of materials would be finished and when the workers in these two sections could go back to work at their old workplace.
- In the hearing, the worker's party said that the company did not give any notification about the workers' move to work at the new branch and the company transported all the equipment for cutting and printing section to the new location quietly. The company did not refute to this.
- The company clarified that it will keep seniority and other benefits that the worker received at the old location the same and will provide transportation back and forth, meaning that the company will transport these two groups of workers to the new location when the two groups of workers start their work and bring these workers back to the old place when these workers leave from their work as usual. If the company brings the workers back to the old factory late, the company will consider the late time as overtime work.
- Among the 65 workers in the cutting and printing sections, no one agrees to work at the new branch because it is difficult to travel back and forth, even though the company will keep the same seniority and other benefits and provide transportation.
- Since the middle of October 2007, the workers in these two sections have gone to work but there has been no work to perform because the company had transported all the garments and equipment for the cutting and printing sections to the new branch and demanded the workers to work at the new branch.
- Even though the 65 workers in these two sections do not agree to work at the new branch, the company still gives them their basic wage, seniority payments and regular work bonus. Each worker receives pay from US\$ 60 per month.

- On 25 January 2008, employer party and worker party brought this case to the Arbitration Council to resolve collective labour dispute of Hytex Garment (Cambodia) Arbitral Award No. 08/08. In Arbitral Award No. 08/08 the workers suggested the company calculate contract termination payments for those workers who did not want to work at the new location. This issue was conciliated and the parties made an agreement on issue No.7 “the company will not change the workplace from the old location to the new location.”
- The workers interpreted the agreement of 25 January 2008 regarding changing the workplace of the workers in the two sections to work at the new branch, to mean that the company changes its location, because the company changed the workplace for all workers and moved all the equipments for cutting and printing sections from old location to new branch location.
- On the other hand, the company’s interpretation was that the company asked the workers in these two sections to work at the new branch, meaning that the company did not change the company’s location because the new location is simply the company’s new branch.

REASONS FOR DECISION

Issue: Demand for the company to retain the cutting section and printing section to work at the old location, but if the company requires workers to work at another branch the company should terminate previous contract first by calculating termination payments according to the Labour Law.

Article 2 of the Labour Law states that “...[They] are considered to be employers who constitute an enterprise, within the meaning of this law, provided that they employ one or more workers, even discontinuously. ...[Workers work] under the supervision and direction of the employer.”

In the previous Arbitral Awards, the Arbitration Council interpreted this Article 2 to mean that the employer party has the right to manage and supervise the company. In accordance with this Article, the Arbitration Council finds that the employer has a right to change the location of the company from one place to another place, and move the workers from one place to another place.

But regarding the demand in this case, the Arbitration Council finds that the joint announcement of notification No.HYC:1408, dated 6 August 2007 made by the employer party, union federation workers, and union workers’ representative saying that “*until now the company has not yet moved locations, but if the company moves locations, the company will be responsible for all the workers according to their promise as follows:*

1. *If there is any worker who can not move, the company will pay for termination of the contract in accordance with the law.*
2. *The company will provide written notification and settle with the workers one month before they move.*
3. *If there is a change, the company will apply voluntary principles.”*

The Arbitration Council finds that in the agreement dated 25 January 2008 between employer's party and employee's party in dealing with labour dispute of Hytex Garment (Cambodia) Arbitral Award No. 08/08, issue 7 stated that *“The Company would not change the workplace from the old location to the new location”*.

Regarding the joint notification and agreement, the employer party and employee party have different interpretations. The employee party interprets the fact that the employer's changing of the workplace of the workers in these two sections and the moving of equipment out from the cutting and printing section to the new branch's location, means that the company changes its location. The employer party argues that the fact that the company requires workers in these two sections to work in the company's new branch does not mean that the company changes its location, because the new place is simply a new branch of the company and some factory sections remain in the old location still operating as normal.

Article 312 paragraph 2 of the Labour Law states that *“The Arbitration Council legally decides on disputes concerning the interpretation and enforcement of laws or regulations or of a collective agreement. The Council's decisions are in equity for all other disputes. “*

Therefore the Arbitration Council will interpret this notification and agreement above to determine whether changing the workplace of these two work sections and moving equipment for these sections to the new branch's location means changing the company's location or not? Also, do the workers have to go to work at the company's new branch or not?

In Arbitral Award 17/03 & 18/03-Ho Hing, the Arbitration council determined that the employer has the right to supervise and manage the company including transferring the workers from one place to another as long as certain conditions are followed, including: (1) no wage reduction (2) no transferring the workers to a far place (3) no change from day shift to night shift or from night shift to day shift (4) no change requiring substantially different skills. In the case of 17/03 & 18/03-Ho Hing, the company moved only two workers from their former' workplace to a new location, but the production activities in the former place still operated normally, not everyone in the section was moved.

[]In general the Arbitration Council aims to maintain consistent interpretations as with previous Arbitral Awards if such interpretation is reasonable and regarding similar facts.

The facts in this case are not the same as the facts in the Arbitral Award 17/03 & 18/03-Ho Hing because in this case the company changed the workers' workplace of these two sections which are the cutting and printing section that have 65 workers in total and

moved all the equipment used for the cutting and printing sections to the new branch location.

The Arbitration Council determined that the parties agreed not to move the company's location according to the agreement dated 25 January 2008 of Arbitral Award 08/08, issue 7, which stated that "*The company would not change the workplace from the old location to the new location.*" This means that the company still keeps the work for the workers in these two sections the same according to their profession and skills, the work equipment is still the same, the workplace of the workers is still the same, and the processing of the product still goes on as normal, and it should not cause workers to be without work. However, in reality, in this case the company sent the work of these two sections, the cutting and printing sections, that have 65 workers, along with all equipment that was used for these sections, to the company's new branch and it causes the workers of these two sections to be without work at the old location and completely closes down the production activities in old location because the company completely moved all production activities in these two sections from the old location to the new location and the company requires the workers in these two sections to work at the company's new branch.

Moreover, the company did not give any prior notification before the company changed the workers' workplace to the new branch. The workers did not agree to work in the new branch, and continued to work at the old location even though there was nothing to do and the employer paid their wage every month (main wage, seniority payments and attendance bonus), and workers received over US\$ 60 per month from the middle of October, 2007. Therefore, the Arbitration Council finds that the company's practice is unreasonable when it required workers in these two sections to work in the new branch location, although the company interpreted that the company did not change the location because the new location is just the company's new branch. The Arbitration Council finds that the important meaning of 'changing location' does not only refer to changing the building of the factory, but means changing the workplace of the workers in these two sections -- which are the cutting and printing sections, in which there are 65 workers in total-- to work in the new place and moved all the equipment that was used on a daily basis for these sections from the old location to the new location. Based on this, the Arbitration Council finds that the company requirement for the workers in these two sections to move and sent all their work and all equipment that was used for these sections to the new branch location was a change of the company's location because it completely eliminated the production activities in the cutting and printing sections in the old location as the production activities of these two sections had been moved to the new branch location.

According to above reasons, the Arbitration Council determines that (1) according to the meaning of the notification dated 6 August 2007, if the company requires the workers in

cutting and printing sections to work at the new branch, the company must follow the notification which states that “1. If there is any worker who can not move, the company will pay for termination of the contract in accordance with the law...[and] 3. If there is a change, the company will apply voluntary principles;” [and] (2) but the employer party and worker party also made another agreement dated 25 January 2008 which states that “The company would not change location from the old location to the new location.”

Thus, the Arbitration Council decides that the employer must retain workers in cutting and printing sections at the same location or the employer must terminate the old contracts first by paying termination payments in accordance with the Labour Law, if the company require workers to work in the new branch.

Based on findings of fact and evidence and reasoning as explained above the Arbitration Council makes its decision as follows:

DECISION AND ORDER

- Order the employer to retain workers in the cutting and printing sections at the same location or the employer must terminate the old contracts first by paying termination payments in accordance with the Labour Law, if the company requires workers to work in the new branch.

Type of Award: Non binding awards

This Award will become binding after 8 days of the date of its notification unless one of the parties lodges a written opposition to the Minister of Labour through the Secretariat of the Arbitration Council within this time period.

SIGNATURES OF MEMBERS OF THE ARBITRATION PANEL:

Arbitrator chosen by the employer party:

Name: **KAO THACH**

Signature:

Arbitrator chosen by the worker party:

Name: **TUON SIPHANN**

Signature:

Chair Arbitrator (chosen by the two Arbitrators):

Name: **PEN BUNCHHEA**

Signature: